

REMARKS

Summary of the Amendment

Upon entry of the above amendment, claim 17 will have been amended and claims 40-51, directed to the non-elected invention, will have been canceled without prejudice or disclaimer of the subject matter recited therein. Moreover, Applicant expressly reserves the right to file the subject matter of these claims in one or more divisional applications. Accordingly, claims 1-39 will be pending.

Summary of the Official Action

In the instant Office Action, the Examiner reiterated the previous restriction requirement and made the requirement final. The Examiner also objected to claim 17 on the basis of a minor informality. Additionally, the Examiner rejected claims 1-15, 17, 18, 20-23, 30-33, 35 and 37-39 over the art of record. Finally, the Examiner indicated that claims 16, 19, 24-29, 34 and 36 contain allowable subject matter and would be allowable if presented in independent form. By the present amendment and remarks, Applicant submits that the objections and rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Allowable Subject matter

Applicant appreciates the indication that claims 16, 19, 24-29, 34 and 36 contain allowable subject matter. However, at this time, these claims are not being presented in independent form because it is believed that claim 1, from which these claims depend, is
(P24853 00050648.DOC)

allowable. Furthermore, Applicant submits that all of the pending claims 1-39 are in condition for allowance and that the rejection under 102(e) is now moot and should be withdrawn.

Interview of August 28, 2006

Applicant appreciates the courtesy extended by Examiner Hess in the Interview of August 28, 2006. In that interview, Applicant's representative discussed, among other things, that the anticipation rejection was improper because HAMMOCK fails to disclose or suggest multi-layered storage and return areas being arranged side by side and changing in length depending on a state of fullness of the storage device while an overall length of the continuous conveying element remains generally constant and at least one storage layer of the multi-layered storage area and at least one storage layer of the multi-layered return area being arranged on a common horizontal plane, as recited in independent claim 1.

In particular, it was emphasized that while it is arguable that HAMMOCK discloses an arrangement having a multi-layered storage area 18 and a return area 22 arranged side by side, it is clear from the Abstract that these areas 18 and 22 are fixed do not change in length depending on a state of fullness of the storage device. Furthermore, while it is apparent that area 20 changes in length relative to areas 18 and 22, the figures of HAMMOCK show that the levels of areas 18, 20 and 22 are on different horizontal planes (see e.g., Fig. 7). Accordingly, HAMMOCK fails to disclose, or even suggest, at least one storage layer of the multi-layered storage area and at least one storage layer of the multi-

layered return area being arranged on a common horizontal plane.

Applicant's representative also pointed out that the rejection would be improper if and when Applicant filed a certified English language translation of the priority document copy because Applicant would then be entitled to an effective US filing date of February 5, 2003 which antedates the March 12, 2003 US filing date of HAMMOCK.

In response, the Examiner agreed that HAMMOCK did not appear to disclose at least one storage layer of the multi-layered storage area and at least one storage layer of the multi-layered return area being arranged on a common horizontal plane. The Examiner also agreed to reconsider the prior art rejection after reviewing Applicant's response to the instant Office Action.

In view of the arguments noted in the Interview and those set forth herein, Applicant respectfully requests that the pending claims be indicated to be allowed.

Objection to the Claims is moot

Applicant submits that the objection to claim 17 is moot inasmuch as claim 17 has been amended consistent with the Examiner's comments in the instant Office Action.

In particular, claim 17 has been amended to include the term "and" as suggested by the Examiner.

Accordingly, Applicant respectfully requests that the above-noted objection be withdrawn.

Traversal of Rejection Under 35 U.S.C. § 102

Applicant traverses the rejection of claims 1-15, 17, 18, 20-23, 30-33, 35 and 37-39 under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 6,793,062 to HAMMOCK et al.

In the rejection, the Examiner asserted that HAMMOCK discloses all the recited features of these claims, including at least one storage layer of the multi-layered storage area and at least one storage layer of the multi-layered return area being arranged on a common horizontal plane. Applicant respectfully disagrees and traverses this rejection. Applicant respectfully submits that this rejection is improper because HAMMOCK fails to disclose, or even suggest: *inter alia*, the multi-layered storage and return areas being arranged side by side and changing in length depending on a state of fullness of the storage device while an overall length of the continuous conveying element remains generally constant and at least one storage layer of the multi-layered storage area and at least one storage layer of the multi-layered return area being arranged on a common horizontal plane, as recited in independent claim 1.

While it is arguable that HAMMOCK discloses an arrangement having a multi-layered storage area 18 and a return area 22 arranged side by side, it is clear from the Abstract that these areas 18 and 22 are fixed do not change in length depending on a state of fullness of the storage device. Furthermore, while it is apparent that area 20 changes in length relative to areas 18 and 22, the figures of HAMMOCK show that the levels of areas 18, 20 and 22 are on different horizontal planes (see e.g., Fig. 7). Accordingly, HAMMOCK fails to disclose, or even suggest, at least one storage layer of the multi-layered storage

{P24853 0005C648.DOC}

area and at least one storage layer of the multi-layered return area being arranged on a common horizontal plane.

Applicant also submits that the instant rejection is now improper because Applicant is herein filing a certified English language translation of the priority document. As the Examiner will note, Applicant is now entitled to an effective US filing date of February 5, 2003 (the date in which Applicant filed priority document EP 0 309 0031.0) which antedates the March 12, 2003 US filing date of HAMMOCK.

Thus, it is submitted that not only does this document not disclose, or even suggest, the combination of features recited in at least claim 1, but this document is not prior art against the pending claims.

For the foregoing reasons and because this document fails to disclose the above-noted features of the instant invention, Applicant submits that this document fails to disclose each and every recited feature of claim 1. Accordingly, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. § 102(e) and that the instant rejection is improper.

Finally, Applicant submits that claims 2-15, 17, 18, 20-23, 30-33, 35 and 37-39 are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper characterization or reading of HAMMOCK discloses, or even suggests: that the storage device is adapted to store rod-shaped products as recited in claim 2; that the storage device functions on a first in – first out manner as recited in claim 3; that the multi-layered storage area comprises a full strand

as recited in claim 4; that the multi-layered return area comprises an empty strand as recited in claim 5; that each storage layer of the multi-layered storage area and each storage layer of the multi-layered return area is arranged on a common horizontal plane as recited in claim 6; that the multi-layered storage area and the multi-layered return area comprise separate guide elements as recited in claim 7; that the guide elements of the multi-layered storage area are arranged on two disc towers as recited in claim 8; that each of the two disc towers comprise a plurality of rotatably mounted storage discs arranged on a vertical spindle as recited in claim 9; that at least one of the two disc towers can move relative to the other of the two disc towers as recited in claim 10; that a first of the two disc towers is a stationary disc tower and a second of the two disc towers is a linearly movable disc tower as recited in claim 11; that the second disc tower is movable along a generally horizontal plane as recited in claim 12; that at least some of the guide elements are arranged on the multi-layered return area and are mounted on two plate towers as recited in claim 13; that each of the two plate towers comprise a plurality of rotatably mounted plates arranged on a vertical spindle as recited in claim 14; that at least one of the two plate towers is movably mounted as recited in claim 15; that the device further comprises a movable common slide unit comprising a plurality of plate towers and a disc tower as recited in claim 17; that each plate tower comprises a plurality of plates and the disc tower comprises a plurality of storage discs as recited in claim 18; that at least some of the guide element comprise a plurality of stationary rotatably mounted reversing rollers as recited in claim 20; that each of the plurality of stationary rotatably mounted reversing rollers is mounted on a horizontal spindle as recited in claim 21; that the continuous conveying

element comprises a continuous chain as recited in claim 22; that the device further comprises a drive for driving the continuous conveying element, wherein the drive is arranged in the input area as recited in claim 23; that the guide elements comprise a stationary disc tower, a movable disc tower, and a plurality of plate towers supported on spindles as recited in claim 30; that the device further comprises guide sheets, wherein the continuous conveying element is guided along two longitudinal sides of the storage device via the guide sheets as recited in claim 31; that the device further comprises a system for varying the length of the multi-layered storage area and the multi-layered return area, whereby the system is adapted to vary a storage capacity of the storage device as recited in claim 32; that the system is adapted to vary the storage capacity automatically as recited in claim 33; that the device further comprises at least one tensioning system adapted to tension the continuous conveying element as recited in claim 35; a method of storing rod-shaped products using the device of claim 1, the method comprising feeding the rod-shaped products to the input area, positioning the rod-shaped articles onto the continuous conveying element, and guiding the continuous conveying element with the guide elements to the output area as recited in claim 37; a method of conveying rod-shaped products between a first machine and a second machine using the device of claim 1, the method comprising feeding, from the first machine, the rod-shaped products to the input area, positioning the rod-shaped articles onto the continuous conveying element, guiding the continuous conveying element with the guide elements to the output area, and feeding, from the output area, the rod-shaped products to the second machine as recited in claim 38; and a method of conveying rod-shaped products between a cigarette making machine

(P24853 00030648.DOC)

and a cigarette packing machine using the device of claim 1, the method comprising feeding, from the cigarette making machine, the rod-shaped products to the input area, positioning the rod-shaped articles onto the continuous conveying element, guiding the continuous conveying element with the guide elements to the output area, and feeding, from the output area, the rod-shaped products to the cigarette packing machine as recited in claim 39.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection and further requests that the above noted claims be indicated as allowable.

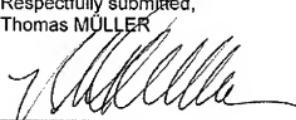
CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention, as recited in each of the pending claims.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate. Please charge any additional fees necessary for consideration of the papers filed herein and refund excess payments to Deposit Account No. 19-0089.

Should there be any questions, the Examiner is invited to contact the undersigned attorney at the number listed below.

Respectfully submitted,
Thomas MÜLLER


Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

September 11, 2006
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191